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LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

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EDITORIAL

Landmark decision on the right of journalists to protect their sources
Broadcasting rights for sports events under discussion

Member States of the Council of Europe are required to give substantial protection to a journalist's sources. A disclosure order cannot be compatible with Article 10 of the European Convention for the protection of human rights and fundamental freedoms unless it is justified by an overriding requirement in the public interest. In this issue, IRIS reports on this landmark decision rendered by the European Court of Human Rights during March. The main question that will arise on the basis of this decision will of course relate to the definition of "journalist". Can anybody be a journalist or will there be a need for an official recognition of a person as a jounalist before he can claim the right to protection of his sources? This raises interesting questions from the point of view of fundamental rights: who will determine who can be regarded as a journalist?

In the past few months, the issue of broadcasting rights for sports events, notably in regard to soccer games, has been debated in countries like Austria, France, Germany, Italy, the Netherlands and the UK. In this issue we report on these debates and on their outcome in a number of countries. We will continue this report in the next issue of IRIS.

Together with this issue you will receive a binder in which you can classify the issues that appeared and will appear in 1996.

Ad van Loon
IRIS Coordinator

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The global Information Society

European Commission: compilation of a plan of Community action concerning the information society

The *Information Society Project Office* has recently published a document entitled "*Europe's Way to the Information Society - Update of the Action Plan",* which reports on the various initiatives completed or in hand at 15 December 1995 of Community institutions concerning the information society (Green Books, draft Directives, Directives, communications, reports, workshops, etc). The plan emphasises legislative and regulatory work carried out on the subject, initiatives concerning networks, basic services, applications and content, and lastly to actions concerning the social and cultural aspects of the information society.

"Europe's Way to the Information Society - Update of the Action Plan", published by the *Information Society Project Office*. URL http://www.ispo.cec. Available in English from the Observatory.

(Frédéric Pinard,
European Audiovisual Observatory)

NETHERLANDS: Internet-providers not held responsible for wrongful acts of Internet-users

In a verdict in summary judgment of 12 March 1996, the President of the District Court of The Hague ruled that Internet Providers can, in principle, not be held responsible for wrongful acts of users, e.g. copyright infringements by third parties. The Church of Scientology had issued a writ against 22 Internet Providers and one Internet User. The Church claimed that defendents had infringed upon the copyrights on the Church's 'religious materials', by making them available on Internet. The President dismissed the claim regarding the Internet-user, writer Karin Spaink, because she had replaced the so-called 'Fishman Affadavit' by summaries of the materials, as soon as the Church of Scientology had substantiated their copyright claim. Regarding the providers, the President ruled that it is to be assumed that these providers do nothing more than give the opportunity to publicise and that, in principle, they can exert no influence over, nor have knowledge of, what the user supplies. A responsibility might be assumed when it is unequivocably clear that a publication is wrongful and when it can be assumed that this is known to the access provider, for example when someone has informed the provider of this. In such cases Internet access providers might be requested to take steps against the user. In this instance, Scientology had not substantiated that the defendents should have acted.

Pres. Rb. Den Haag 12 maart 1996, Church of Spiritual Technology c.s. vs. XS4ALL c.s./Spaink. Available in Dutch from the Observatory.

(Marcel Dellebeke,
Institute for Information Law at the University of Amsterdam)

WIPO

The February 1996 discussions on a possible Berne Protocol and a possible New Instrument

From 1 to 9 February 1996, the sixth session of the Committee of Experts on a Possible Protocol to the Berne Convention and the fifth session of the Committee of Experts on a Possible New Instrument for the Protection of Rights of performers and Producers of Phonograms were jointly held (for reports on the previous sessions *see*: IRIS 1995-2: 3, IRIS 1995-4: 5-6 and IRIS 1995-10: 13). The discussions took place on the basis of a comparative table of proposals made by the participating parties, prepared by the International Bureau.

Berne Protocol issues

The issues of *computer programmer* and *databases* will be set aside to a further stage of the preparatory work, as is the issue of *non-voluntary licenses for sound recording of musical works*. For the latter the starting point will then be to oblige the contracting parties to eliminate non-voluntary licenses within three years of adhering to the Protocol. Some developing countries fear that the period of three years will not be enough to eliminate the licenses. The US foresees problems with the recording and music industry for they do not favour the abolition of licenses. Agreement with the proposals would be a major concession of the US.
Also for the *non-voluntary licenses for primary broadcasting and satellite communication* the proposal would be that these licenses should be eliminated within three years of adhering to the Protocol. Some countries thought there should be an appropriate collective licensing system as a precondition of abolition. Others proposed to limit the abolition to certain categories of works.

As to *distribution (including importation)*, major differences still exist between the participants. The highly important economic and political issues involved have to be negotiated in the next stage of the preparatory work.
The positions regarding the *rental right* have developed to a recognition of a general rental right with the possibility of exceptions for certain categories of works subject to an impairment test, other than computer programmers and works embodied in phonograms. The remaining differences will be taken care of in the following phase of the preparatory work.
Transmission, communication to the public and public performance where the main issues of this meeting. Three possible solutions were proposed. The first is that the right of communication to the public will be extended to all categories of works. This will require a broad concept of the notions of 'the public' and of 'communication'. The second is a broad transmission right, covering transmission by wire, transmission by wireless means, point-to-point as well as point-to-multi-point transmissions, simultaneous and on-demand transmissions and analogue and digital transmissions. The third solution would be an application of the right of distribution through the concept of 'distribution by transmission'. In this solution distribution would include the making available of copies in receiving computers through the transmission of electronic impulses. Opinions are converging concerning the acts which should be covered and by which means (exlcusive rights).
The Committee agreed that the general provision of the Berne Convention on *duration* of protection should apply under the Protocol for photographic works.

New Instrument issues

With regard to *broadcasting, communication to the public and digital transmission* a highly political question was whether these rights should extend to aural and audiovisual fixations or only to aural fixations. Many participants expressed the view that performers and producers of phonograms should be given equal treatment. Provisions on the subject should be as technology-neutral as possible. For broadcasting and communication to the public two solutions were proposed. The first would be to grant exclusive rights of authorization or prohibition with a possibility to limit these rights to a right to renumeration. The second solution would simply be to grant a right to renumeration. The on-demand or subscription based services should however be covered by exclusive rights.
Other subjects were postponed to the next phase of the preparatory work.

Common issues to the Berne Protocol and the New Instrument

The issues of *enforcement and national treatment* will be discussed at a later stage.
A majority of the participants was in favour of *technological protection systems* which should work on a voluntary basis. A possible exemption for professional equipment needs further discussions, as do the effects on non-protected material.
Regarding the *protection of rights management information* opinions differed. Some parties expressed the view that regulations should be fairly precise, others that it should be left open. Relations to other legislation, such as criminal law and telecommunications law, have to be clarified. International law could provide an "umbrella", obligating the sanctioning of certain acts, but leaving methods and means open to national legislation. Unclear remain matters as the possible obligation of rights owners to use management information, the relations between obligations and sanctions regarding such information, and the exercise of moral rights.
For the *sui generis protection of databases* the EC Directive (*see*: IRIS 1996-2: 13, IRIS 1996-3: 6 and IRIS 1996-4: 6) was the basis for the discussion. There was general support for the view that the protection should be supplementary to existing forms of protection. Some parties expressed the view that this right should need a seperate international instrument, distinct from the Protocol or the New Instrument. The Committee agreed that the subject needs further studies.
The *next session* of both Committees will be held on *22 to 24 May*. The conclusionary *Diplomatic Conference* will be held from *1 to 21 December, 1996*. In the meantime different preparatory meetings will be held.

Report of the sixth session of the Committee of experts on a Possible Protocol to the Berne Convention and report of the fifth session of the Committee of Experts on a Possible Instrument for the Protection of the Rights of Performers and Producers of Phonograms, Geneva, 1 to 9 February 1996. WIPO document BCP/CE/VI/16-INR/CE/V/14. The Document is available in English through the Observatory.

(Jaap Haeck,
Institute for Information Law, Amsterdam)

Council of Europe

European Court of Human Rights: The journalist's sources protected by Article 10 of the European Convention on Human Rights

In its judgment of 27 March 1996 the Grand Chamber of the European Court of Human Rights with an 11 to 7 majority came to the conclusion that a disclosure order requiring a British journalist to reveal the identity of his source and the fine imposed upon him for having refused to do so, constitutes a violation of the freedom of expression and information as protected by Article 10 of the European Convention for the protection of human rights and fundamental freedoms.

In 1990 William Goodwin, a trainee-journalist working for "The Engineer", was found guilty by the House of Lords of Contempt of Court because he refused to disclose the identity of a person who previously supplied him with financial information derived from a confidential corporate plan of a private company. According to the House of Lords, the necessity of obtaining disclosure lay in the threat of severe damage to the private company which would arise if the information contained in their corporate plan was disseminated while their refinancing negotations were still continuing. The disclosure order was estimated to be in conformity with Section 10 of the Contempt of Court Act of 1981, as the disclosure was held to be necessary in the interest of justice.

The European Court of Human Rights, however, is of the opinion that the impugned disclosure order is in breach of Article 10 of the European Convention on Human Rights. Although the disclosure order and the fine imposed upon Goodwin for having refused to reveal his source are "prescribed by law" and pursue a legitimate aim ("the protection of the rights of others"), the interference by the English courts in Goodwin's freedom of expression and information is not considered as necessary in a democratic society. The majority of the Court, and even the joint dissenters, firmly underline the principle that "protection of journalistic sources is one of the basic conditions for press freedom" and that "without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest". In its judgment the Court emphasizes that without protection of a journalist's sources "the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected". The Court considers that a disclosure order cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest. As the Court pointed out : "In sum, limitations on the confidentiality of journalistic sources call for the most careful scrutiny by the Court". The European Court *in casu* is of the opinion that the interests of the private company in eliminating, by proceedings against the source, the (residual) threat of damage through dissemination of the confidential information, are not sufficient to outweigh the vital public interest in the protection of the applicant journalist's source.

The judgment of the European Court in the Goodwin case gives important and additional support in favour of the protection of journalistic sources as reflected already in some national laws and in international policy instruments on journalistic freedoms (*see,* for example, the Resolution of the European Parliament on the Confidentiality of Journalists' Sources, OJEC, 14 February 1994, No C 44: 34 and the Resolution on Journalistic Freedoms and Human Rights, adopted in the framework of the Council of Europe's Conferrence of ministers responsible for media policies, held in Prague, 7-8 December 1994 (*see:* IRIS, 1995-1: 4).

European Court of Human Rights, Case of Goodwin v. the United Kingdom, 27 March 1996, No 16/1994/463/544. Available in English and French from the Observatory.

(Prof. Dirk Voorhoof,
Media Law Section of the Department of Communication Sciences, Ghent University, Belgium)

Forthcoming meetings of different groups of specialists

At its third meeting (19-20 March 1996), the Group of Specialists on Media in a Pan-European Perspective (MM-S-EP) continued its elaboration of draft guidelines on the guarantee of the independence of public service broadcasting. The aim of the guidelines is to provide Member States with orientations on the provisions to be included in domestic law with a view to avoiding any interference in the day-to-day management and operation of public service broadcasters. The draft guidelines cover a range of issues such as the status and the respective competences of the boards of management and supervisory bodies of public service broadcasting organisations, the status of their staff, their funding, etc.

The Group of Specialists on New Communications Technologies (MM-S-NT) will organise on 13 May a hearing with representatives of organisations involved in the development of new communications services (telecommunications operators, broadcasting organisations, etc). The aim of the hearing will be to review together with the professionals the issues raised by new communications technologies from the point of view of the protection of human rights and democratic values. The conclusions of the hearing will contribute to the preparation of the 5th European Ministerial Conference on Mass Media Policy, which will be held in Greece in the second half of 1997. The general theme of the Conference will be "The Information Society: a challenge for Europe".

The Committee of Experts on Media Concentrations and Pluralism (MM-CM) will organise on 6 June a contact meeting with the national correspondents apppointed by the member States to provide the Committee with information on the evolution of media concentrations at the national level. The aim of the hearing will be to take stock of the development of media concentrations at the pan-European level and to determine, as appropriate, whether any concerted initiative should be taken at the level of the Council of Europe to guarantee the maintenance of pluralism.

Furthermore, the Committee has commissioned a study on the impact of new communications technologies on media concentrations and pluralism. The final version of the study should be available in the autumn.

A seminar on "Copyright and neighbouring rights in the digital era: new challenges for rights holders, rights management and users" will be organised in Oslo on 28 and 29 May, in cooperation with the Royal Norwegian Ministry of Cultural Affairs. Information on the seminar may be obtained from Mr Alfonso de Salas, Media Section, Directorate of Human Rights, Council of Europe (Tel: (+33) 88.41.23.29/Fax: (+33) 88.41.27.05).

(Christophe Poirel, Media Section,
Directorate of Human Rights, Council of Europe)

IRIS LEGAL OBSERVATIONS
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European Union

More agreements with non-member countries on intellectual property

The European Union has reached a first agreement in Asia with the Republic of Korea. Inter alia, it stipulates that both parties must firstly aim at improving access to their own markets (including telecommunications) by applying the most favoured nation clause and secondly ensure effective and adequate protection for systems of intellectual, industrial and commercial protection by setting up effective legal measures to achieve this. Both parties also agree to support the TRIP'S multilateral agreement which assures, through the WTO (World Trade Organisation), a framework for international relations concerning intellectual property.
Negotiations have also begun with the countries of the Persian Gulf. Apart from discussions on political dialogue and decentralised cooperation between these two geographical areas, a parallel meeting was held with the six ministers of communication concerned, with a view to establishing wider cooperation in the media field (joint productions, cooperation among press companies, etc).
In addition, using the assent procedure, the European Parliament has adopted the texts presented by the Council concerning relations and agreements between the EU and the Ukraine, Russia, Moldova and Kyrgyzstan. It stresses the importance in these agreements of the approximation of legislation on the protection of intellectual property.
Lastly, by Council Decision of 20 November 1995, the European Community and its Member States and the Southern Common Market (Mercosur) and its Party States (Argentina, Brazil, Paraguay, Uruguay) have agreed on the provisional application of certain provisions in the interregional framework cooperation agreement between the two parties. Inter alia, this agreement provides for cooperation in the field of telecommunications and information technology (Article 16) and cooperation regarding information, communication and culture (Article 21). The same holds for the decision of the Council and the Commission of 22 December 1995 on conclusion of an interim agreement between the State of Israel and the European Community. This agreement is intended as a transitional stage pending the entry into force of the Euro-Mediterranean Agreement establishing an association between the European Communities and the State of Israel signed in Brussels on 20 November 1995. Chapter 2 (of Title III) contains provisions concerning intellectual property, stating that the parties shall grant and ensure adequate and effective protection of intellectual, industrial and commercial property rights in accordance with the highest international standards.

Relations and agreements between the EU and Ukraine, Russia, Moldova and Kyrgyzstan. OJEC dated 18.12.1995, no.C 339: 42-53.
Council Decision of 20 November 1995 concerning the provisional application of certain provisions in the interregional framework cooperation agreement between the Community and its Member States of the one part and the Southern Common Market and its Party States of the other part. OJEC dated 19.03.1996, no.L 69:1-22.
Decision of the Council and the Commission of 22 December 1995 on the conclusion by the European Community and the Iron and Steel Community of the one part and the State of Israel of the other part concerning trade and trade-related matters. OJEC dated 20.03.1996, no.L 71: 1-148.
All these texts are available in English, French and German at the Observatory.

(Frédéric Pinard,
European Audiovisual Observatory)

EU Council/European Parliament: Directive on the legal protection of databases adopted - Part 3: Epilogue?

In IRIS 1996-2: 13 we reported on the adoption of the Directive on the legal protection of databases. We indicated that the Directive would be adopted on 15 or 22 February. At the International UNESCO Symposium on Copyright and Communication in the Information Society, held in Madrid from 11-14 March 1996, the Commission announced that the Directive was in the end adopted on 26 February 1996. We reported this in IRIS 1996-3: 6. Then after the publication of IRIS 1996-3 we learned that the official date of the adoption of the Directive is 11 March 1996.

Directive 96/9/EC of 11 March 1996 concerning the legal protection of databases, OJEC No L77: 20. Available in English, French and German from the Observatory.

(Ad van Loon,
European Audiovisual Observatory)

European Union: The European Parliament looks into children's programmes

The European Parliament's Committee on Culture and the Media held a conference at the end of February on the place given to children's programmes in the European audiovisual industry. A number of children's defence organisations, distributors, researchers and educationalists were able to present their own recommendations and studies.
The International Centre for Films for Children and Young People (CIFEJ) in Montreal presented a study on legislation and regulations in Europe entitled "*Creating a space for children - children's film and television in EU countries".*

" Creating a space for children - Children's Film and Television in EU Countries " by Joan Irving et Connie Tadros, published by the International Centre of Films for Children and Young People (CIFEJ). Available upon payment of US$15, from the secretariat of the CIFEJ, 3774 St-Denis Street, Suite 200, Montréal, Canada H2W 2M1, tel.: +1 514 2849388, fax: +1 514 2840168, e-mail: cifej@odyssee.net, URL http://www.odyssee.net/~cifej.

(Frédéric Pinard,
European Audiovisual Observatory)

Economic and Social Committee: Opinion on a multi-annual Community programme on the information society

On 21 December 1995 the Economic and Social Committee delivered its opinion on the communication from the Commission and a proposal for a Council Decision on the adoption of a multi-annual programme (INFO 2000) (OJEC no.C 250 dated 26.9.1995). This Community programme is aimed at stimulating the development of a European multimedia content industry and encouraging the use of multimedia content in the emerging information society. INFO 2000 is to cover the period from 1 January 1996 to 31 December 1999 and will have a budget of XEU 100 million; it will cover printed works (newspapers, books, publications, etc), electronic production (databases, CDs, electronic games, etc) and audiovisual production (television, radio and cinema). The programme is to take three courses of action:
- to stimulate demand and increase public awareness,
- to exploit the information potential of the public sector in Europe,
- to develop European multimedia potential.

Opinion of the Economic and Social Committee of 21 December 1995 on the communication from the Commission and the proposal for a Council Decision concerning a multi-annual Community programme to stimulate the development of a European multimedia content industry and to encourage the use of multimedia content in the emerging information society (INFO 2000). OJEC dated 19.03.96, no.C 82:36-40. Available in English, German and French at the Observatory.

(Frédéric Pinard,
European Audiovisual Observatory)

National

CASE LAW

GERMANY: Product placement in films - Federal Court sets the rules

In a judgment given on 6 July 1995, the Federal Court ruled that product placement in cinema films is permissible, provided that the audience is made aware of it beforehand, and at latest in the opening credits.
The judgment concerns the film, *Feuer, Eis und Dynamit*, which tells the story of an eccentric millionaire and features a number of sports events. The teams appearing are company teams, and the names and symbols of the companies concerned are displayed on their clothing, equipment and other items (e.g. skis, bicycles, beverages). At least a fifth of the film's production costs were covered by the firms featured in it, and some of them were also licensed to use it for advertising purposes. According to the court, this meant that the making and showing of the film served, objectively and subjectively, to improve the competitive position of third parties. The fact that featured names, trade marks and products formed part of the story made no difference. The firms concerned had paid substantial sums to have their products promoted in the film, and the film-makers had accordingly set out to do this. This constituted a breach of Section 1 of the Unfair Competition Act - not because it violated the legal rule that public and private broadcasters must separate advertising and programme material (which did not apply to film makers and distributors), but because advertising must be made clearly recognisable when, and in so far as, the audience concerned did not expect it.
The decision as to whether audiences must be told that the film includes paid advertising has nothing to do with prohibiting the sale of a film which is a work of "art" within the meaning of Article 5 of the Basic law (*Grundgesetz*), but merely with prohibiting a certain mode of sale which affects neither the nature of the work nor the artist's creative freedom. The relevant principle here is the individual's constitutional right, under Article 2 of the Basic Law, to free development of his own personality, which includes freedom from manipulation. Making it a rule, under Section 1 of the Unfair Competition Act, that the audience must be informed, before a film is shown, of its special advertising character would thus seem consistent with the constitution. In interpreting the concept of "morals" in Section 1 of the Act, attention must also be paid to what the Basic Law has to say on competition. A film which contains paid advertising can also be "art" within the meaning of Article 5, para. 3, first sentence of the Basic Law. Artistic freedom is not restricted by law, but is restricted by the constitution, and particularly by Article 2, para. 1 (general freedom of conduct) and Article 1, para. 1 (human dignity) of the Basic Law. These principles are compromised when the individual finds himself confronted with advertising in a situation where he has no reason to expect it and from which he cannot simply withdraw. Exercise of the basic right to artistic freedom is not unduly restricted by the film-maker's being required to make it clear to the audience that the film they are going to see contains paid advertising, when and to the extent that this exceeds the expected level. He is not required to make changes either in the film itself or in the intended mode of presentation.

Judgment of the Federal Court of 6 July 1995, I ZR 58/93, I ZR 2/94, 34 S., 10 S. - Available in German from the Observatory.

(Stefanie Junker,
Institut für Europäisches Medienrecht - EMR)

GERMANY: A princess protected - Federal Court on privacy

On 19 December 1995, Princess Caroline of Monaco (plaintiff) won an action against the publishing house Burda (defendants) in the sixth Civil Chamber of the Federal Court.
The case was concerned with a photo feature published in the picture magazine, *Freizeit-Revue*, No. 30, on 22 July 1993. Under the heading, "The sweetest pictures of her romance with Vincent", this featured photographs of Princess Caroline and the actor Vincent Lindon in a garden cafe. Both obviously assumed that no one was watching them, and the pictures were taken from a considerable distance, using a telephoto lens.
The Federal Court ruled that the defendants must not publish these photographs of the plaintiff again, since they concerned her private life and so violated her strictly personal rights.
It was true that pictures of people in the public eye - to which category the Princess, as oldest daughter of the ruling Prince of Monaco, belonged - could in principle be circulated and published without their consent, but not when this conflicted with their justified interests (Section 23, para. 1 (1) and para. 2 of the Art Copyright Act).
The plaintiff could invoke her right to respect for her private life, which derived from the general personality rights protected by Article 2 of the Basic Law. This right included the right to be alone, and people in the public eye were also entitled to avail of it.
Privacy deserving protection was not restricted to a person's home, but could extend to outside places which, although open to the public, were secluded. The decisive factor here was a person's withdrawing to a secluded place, where he or she clearly wished to be alone and, relying on that seclusion, behaved in a manner in which he or she would not have behaved in public. The publication of photographs, taken secretly or by surprise, of people in this situation was an unacceptable violation of their privacy.
In weighing up the material and other interests involved, the plaintiff's personality rights (Article 2 of the Basic Law) must in this case count for more than the public's interest in information (Article 5 of the Basic law), protected by freedom of the press. The photographs in question were mainly intended to gratify the readers' taste for sensation and curiosity concerning purely private aspects of the plaintiff's life, and their information value was, at most, slight.
At the same time, the Chamber rejected the plaintiff's application for a legal ban on the publication of photographs showing her shopping, riding or eating in crowded restaurants, alone or with her children. In situations like this, well-known people must accept the publication of such photographs, even when these did not show them performing official functions, but were concerned with their private lives in the broader sense.

Judgment of the Federal Court of 19 December 1995, VI ZR 15/95 -24 S. Available in German from the Observatory.

(Andrea Schneider,
Institut für Europäisches Medienrecht - EMR)

NORWAY: Defamation and jurisdiction without frontiers in broadcasting matters

In October 1995, the Oslo *Byrett* (the lower court of Oslo) condemned the Swedish public service broadcaster *Sveriges Television* (SVT) to pay damages of 320 000 Norweigan Kronor to a number of seal hunters in Norway. The reason for this was the broadcasting of a documentary on seal hunting produced by the Norwegian free lance journalist, Odd Lindberg and the Swedish producer, Bo Landin, which the court found to be defamatory.
The case has been given topical interest again since the seal hunters have appealed for higher damages to the *Lagmansretten* (the appeal court) with reference to a previous case thought to be similar, against *Norsk Rikskringkastning* (NRK) where the broadcaster was condemned to pay higher damages than SVT (Oslo *Byrett,* 4 August 1993). According to the seal hunters, Bo Landin and SVT are even more responsible for the defamatory statements in the documentary than NRK at the time, and therefore the damages would consequently have to be higher.
The fact that the Norwegian seal hunters earlier complaint to the Court in Oslo, and now appeal to the *Lagmannsretten* in Norway has raised an interesting question of jurisdiction. In its judgement the court of Oslo found that the defamatory statements, even though they were broadcast in Sweden, had an impact in Norway and therefore assumed jurisdiction over the case. The court of Oslo did not only decide on the defamatory nature of statements in the documentary itself, but also on statements made by SVT at a press conference in Oslo where they announced the broadcasting of the documentary. The court referred to the Lugano Convention, Article 5 § 3, stipulating that a person can bring a matter to court where a damage has occured or has been caused. With reference to the same rule the court also decided to apply Norwegian law.
In line with the discussions in Europe on which country has jurisdiction over broadcasters and in the light of the Television without Frontiers Directive, this has caused a somewhat animated debate in Sweden and in Norway. It remains to be seen what position the appeal court will take in this matter. IRIS will keep you informed.

Oslo *Byrett,* 20 October 1995, Norwegian seal hunters v. *Sveriges Television* and Bo Landin. Available in Norwegian from the Observatory.

(Helene Hillerström, TV4 AB)

LEGISLATION

CZECH REPUBLIC: New law on the collective management of copyright and associated rights

The activity of copyright enforcement associations in the Czech Republic has recently been newly and comprehensively regulated by Act No. 237 of 27 September 1995.
The act makes changes in the copyright regulations embodied in Act No. 35/1965, the "Act on literary, scientific and artistic works" of 25 March 1965, last amended by Act No. 89/1990, and in a series of regulations on fees payable on works covered by copyright and associated rights.
Specifically, the act covers the public reproduction of works, the renting and hiring out of works, and remuneration for the private use of works. A new element is the payment of fees on reprography. Copyright associations must be formally licensed by authors, establish scales of charges, collect fees and distribute them in accordance with agreed distribution principles.
The Czech Ministry of Culture is responsible for licensing and supervising copyright associations.

Act No. 237 on the collective management of copyright and associated rights and on amending and supplementing certain regulations, of 27 September 1995. Available in Czech from the Observatory.

(Andrea Schneider,
Institut für Europäisches Medienrecht - EMR)

SLOVAK REPUBLIC: New language law

The National Council of the Slovak Republic passed a new State Language Act on 15 November 1995. This came into force on 1 January 1996, and supersedes the Slovak Official Language Act of 1990.
The preamble to Act No. 270/95 describes the Slovak language as the main element in the Slovak people's identity and an expression of the Slovak Republic's sovereignty, and the Act itself makes Slovak the state language on the territory of the Slovak Republic.
Section 5 of the Act deals with the use of the Slovak language in the media. Broadcasting in the Slovak Republic is still governed in a general sense by the Broadcasting Act, No. 468/91, passed in the former Czechoslovakia on 30 October 1991 and last amended on 14 July 1992.
Under Section 5 of the new act, programmes must in principle be broadcast in the official language. Exceptions include the authorised programmes of the national and ethnic minorities, and foreign programmes. These must always, however, be introduced in Slovak.
The Slovak Ministry of Education and Culture is responsible for enforcing the act. Repeated violations carry a fine of up to 500,000 Sk.

Act No. 270 of 15 November 1995 on the state language of the Slovak Republic. Available in Slovak from the Observatory.

(Andrea Schneider,
Institut für Europäisches Medienrecht - EMR)

LAW RELATED POLICY DEVELOPMENTS

GERMANY: *Land* presidents agree to changes in Broadcasting Agreement

Germany's *Land* presidents have reached agreement on a number of previously unsettled questions concerning amendment of the Broadcasting Agreement between the Federal States.
As reported in IRIS-10:13, it was already agreed last autumn that the decisive factor in monitoring media concentrations would in future be the operator's actual share of the market. The aim here is to ensure that no single operator has power to dominate public opinion. In general, a 30% share of the market is to be the upper limit, and full and information programmes will be required to relinquish air-time as soon as their ratings top 10%. For calculation purposes, the operator's own share of the market is added to that of any direct partner with a stake of more than 10% in the operation. The same rule applies, in principle, to members of the same family. However, operators are free to produce proof that no undue influence exists.
It was also decided in the autumn that an investigating committee on concentrations (*Konzentrationsermittlungskommission* or KEK) would be established, although its legal form was left open.
Another important addition to the National Broadcasting Agreement will be a provision on non-discriminatory access to cable networks for broadcasters. The proposal for the setting-up of an independent media assessment body (*Stiftung Medientest*, cf. IRIS 95-5:12) under the agreement was not, however, accepted. The *Länder* will consider at a later stage whether such a body is needed.

Minutes of the informal meeting on "open media questions" held by the *Land* Presidents on 7 March 1996. Available in German from the Observatory.

(Volker Kreutzer,
Institut für Europäisches Medienrecht - EMR)

UNITED KINGDOM: Department of National Heritage extends the regulatory and licensing powers of the ITC

The Secretary of State for National Heritage, Virginia Bottomly, has issued an Order, The Broadcasting (Prescribed Countries) Order 1996, which will extend the existing regulatory and licensing powers of the Independent Television Commission (ITC) to all television services broadcast from the United Kingdom, regardless of which country the service was received.
The Broadcasting Act 1990 describes one type of television programme service under that Act as a non-domestic satellite service. Part of the definition of this service is that it consists of the transmission of television programmes by satellite for general reception in the United Kingdom or in any prescribed country (or both) where the programmes are transmitted from a place which is either the UK or is neither in the UK nor in any prescribed country.
The existing Broadcast (Prescribed Countries) Order 1994 specified only European countries as prescribed. This means that anyone can broadcast from the UK beyond Europe without requiring a licence and under no regulatory control.
The new Order revokes the Order 1994 and instead extend the prescribed countries to every country of the world except the United Kingdom. All broadcasters will be obliged to comply with the ITC's rules on taste and decency, and impartiality. The Broadcasting (Prescribed Countries) Order 1996 comes into force on 15 April 1996.

Section 43(3) of the Broadcasting Act 1990 (a) and The Broadcasting (Prescribed Countries) Order 1996 No 904. Available in English from the Observatory.

(Stefaan Verhulst,
School of Law University of Glasgow)

UNITED KINGDOM: Telecom regulator issues new consultative document on promoting communication in services over telecommunications networks

The UK telecommunications regulator has issued a new consultative document on how to promote competition in services supplied over telecommunication networks; these services include electronic mail, on-line information services, video-conferencing, entertainment services and Internet access. This is part of a continuing process of consultation about how to regulate the changing telecommunications world, and set out details of proposed new regulatory controls. These include giving British Telecom the freedom to choose to set lower prices for independent service providers than for other users, and for stronger restrictions on anti-competetive practices to be included in British Telecom's licence. It also proposes greater transparency requirements through separating different elements of British Telecom's business.

Promoting Competition in Services over Telecommunication Networks, free from Office of Telecommunications, 50 Ludgate Hill, London EC4M 7JJ, tel. +44 171 6348700; fax +44 171 6348943. Also available on the Internet at URL http://www.open.gov.uk/oftel/oftelwww/oftelh.htm. The document itself can be found under http://www.open.uk/oftel/oftelwww/promote/contents.htm.

(Prof. Tony Prosser,
Glasgow University School of Law)

SWEDEN: Government proposal for a new comprehensive Broadcasting Act

The Swedish Government has decided to submit a Bill merging several different laws into one. It concerns the laws on broadcasting, cable, and satellite.
The only change of substance in the Bill is a slightly more explicit restriction on the showing of violence on television. The Bill does not cover private commercial radio broadcasting since this area is studied in a special parliamentary committee which is to submit its proposals in September 1996.

Radio-och TV-lag, Prop.1995/96: 160. Available in Swedish through the Observatory.

(Jens Cavallin,
Council for Pluralism in the media, Sweden)

SWEDEN: New guidelines for public service television

An agreement has been reached between the Liberal, the Centre, and the (ruling) Social Democratic parties on the development of public service radio and television broadcasting in Sweden for the next licence period 1997-2001. Sveriges Radio and Sveriges Television are given new licences for the entire period, whereas the educational services will be reorganised. Decentralization and more independent production are emphasized for the new period.

En radio och TV I allmänhetens tjänst 1997-2001, Prop.1995/96: 161. Available in Swedish through the Observatory.

(Jens Cavallin,
Council for Pluralism in the media, Sweden)

SWEDEN: Report on digital broadcasting

A report on the introduction of digital terrestial broadcasting in Sweden commissioned by the Swedish Government has now been published. The report stresses the strategic importance of the development of a terrestial digital network system that is accessible and promotes free competition, as opposed to a closed private monopolised system which would impair the opportunities of efficiently using digital technology.
In the report it is proposed that the Swedish Parliament decides in spring 1996 on the digitalisation of the terrestial network. It is also proposed that the development of digital transmitters starts in 1997 at the latest; the first stage should be finalised within two years after Parliament's decision. This first stage should result in eight nation wide broadcasting services, i.e., in addition to the existing three terrestial channels SVT1, SVT2 and TV4 there would be five new services. In a second stage the digital network system should have the capacity to distribute 24 different broadcasting services.
The total transition period must not be more than 10 years according to the report - after this period the analogue signals must be closed. When this is done the digital network system will be able to distribute approximately 50 channels. The report proposes that a group of experts should be established to work with the introduction of the new network system and to survey the transition.
The financing of the system is a political question which the report leaves unsolved, no proposals are made in this respect. The distribution costs of a digital broadcasting service is less than the costs of distribution of an analogue broadcasting service; the cost is estimated at around 40 - 50 million Swedish kronor. The cost of digital set-top boxes for the households to receive the digital signals is estimated to be 9 - 10 thousand million Swedish kronor.

Från massmedia till multimedia - att digitalisera svensk television (From mass media to multimedia - to digitalise Swedish television), Stockholm : Fritzes, 1996.-242p.- ISBN 91-38-20185-2.- *Statens offentliga utredningar (SOU),* 1996:25. Available in English through the Observatory.

(Helene Hillerström, TV4 AB)

SWITZERLAND: The Federal Office of Communication (OFCOM) has written to distributors of TV programmes on advertising and sponsoring

With the intention of specifically stating and defining the provisions of the Act on Radio and Television (*LRTV*) on advertising and sponsoring, the Federal Office of Communication has written to distributors setting out the principles it intends to have respected.
The first is a clear line between advertising and programmes (Article 18, paragraph 1 of the *LRTV*). The separating sequence must enable viewers not familiar with the particular programme to recognise clearly the advertising slot which follows (eg use of superimposed signals such as "TV spot", "advertising" or equivalent terms).
The second principle concerns the designation of sales broadcasts (Article 11, paragraph 1 of the Order on Radio and Television *(ORTV)*. Teleshopping broadcasts must be separated from other parts of the programme and must in addition be clearly referred to as "advertising". Designation of this kind is not sufficient if it is only sporadic.
The third principle concerns the arrangement of the advertising slot (Article 18, paragraph 2 of the *LRTV*). Thus the various parts of a broadcast presenting a degree of unity may not be considered as independent broadcasts simply because they have different names. The decision whether or not they form separate entities between which it is possible to place advertising depends on the general impression made on the public, whether in terms of content or of form (eg the presenter is different, the public is greeted at the beginning of the first sequence or in each sequence, etc).
Lastly, a fourth principle concerns sponsoring. The sponsor must be named at the beginning and end of the broadcast being sponsored (Article 19, paragraph 2 of the LRTV), the broadcast must be clearly identified as such (for example using a superimposition technique). In addition, when the sponsor is mentioned, no sequence of images or music from advertising spots for the sponsor's products or services may be used. Reference must therefore be restricted to one or more of the following features: name of the company or its logo, brand-name or brand logo.
Thus, by making known its interpretation of the provisions of Swiss legislation on the subject, the Federal Office of Communication's aim is to act preventively, limiting as much as possible the infringements national distributors might be tempted to commit.

Letter from the Federal Office of Communication (OFCOM) dated November 1995. Available in French from the Observatory.

(Frédéric Pinard,
European Audiovisual Observatory)

News

Information on law related policy developments which may have legal consequences but of which no documents or other texts are available yet.

European Commission: Objections against *Cablevision* agreement of *Telefonica* and *Canal Plus* Spain

On 3 April 1996, the daily bulletin EUROPE reported that the European Commission has sent a letter of grievances to the Spanish companies *Telefonica* and *Canal Plus* Spain regarding to the *Cablevision* joint venture agreement entered into by these two companies. *Cablevision* provides technical, administrative and commercial services to cable operators in Spain. The Commission considers that this joint venture represents a concentration of Community-wide dimension which should have been notified to it under Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings.
The Commission invited the companies to make their observations known and pointing out that they are likely to be fined (up to ECU 50 000 for not giving notification, up to 10% of the turnover for more serious violations).
According to EUROPE, Spanish Government sources have stated that the operation comes exclusively under national legislation because on of the conditions for community competence would not have been met since *Canal Plus* Spain would carry out over two thirds of its activities in just one Member State (Spain). The Commission, however, would be of the opinion that *Canal Plus* France's activities must be taken into consideration. In that case, the cumulated activities of *Canal Plus* France and *Canal Plus* Spain are carried out to a large extent outside Spain which makes the Commission exclusively competent to assess the matter under European law.

(Ad van Loon,
European Audiovisual Observatory)

GERMANY: New copyright law raises questions concerning EC Directive on rental rights

The Federal Constitutional Court is at present considering a constitutional complaint submitted on 27 December 1995 by a video rental operator. This concerns the third Act amending the Copyright Act (*see*: IRIS 1995-8: 1), which came into force on 1 July 1995, and is intended to implement the EC Directive of 19 November 1992 on rental and lending rights and certain rights related to copyright in the field of intellectual property.
CD rental firms, the Government, the Federal Court and the Federal German Industrial Association, complain that the EC Directive fails in its purpose, which is to give authors a claim on proceeds from the commercial renting of their works on CD.
The background to the new law is a discrepancy between the interests of authors and manufacturers. Distribution of their work is what interests authors, since their income depends on the number of people who pay to hear it. Manufacturers, on the other hand, are primarily interested in sales, and concentrate on boosting them, since this is where their profits lie.
So far, there has been nothing in copyright law to help them do this, but the amended Copyright Act now gives them an independent right, alongside authors, to prohibit the commercial renting of CDs. The old principle was that the author's rental rights lapsed (were exhausted) once he had released his work for rental. Now rights-holders may also forbid rental at a later stage. The new principle is that of non-exhaustibility, which is itself alien to the Copyright Act. The Directive provides a legal basis for transfer of the author's rental rights to the manufacturer, thereby strengthening the latter's legal position so much at the former's expense that - its critics argue - it fails in its purpose.
In his constitutional appeal, the applicant maintains that his freedom to practise his profession (Article 12, Paragraph 1, sentence 1 of the Basic Law (the German Constitution)) has been impaired, since manufacturers now have power to authorise or prohibit rental, and so determine that profession's survival. The real issue here is not protecting authors against renters; on the contrary, authors will in future need extra protection against manufacturers.
Critics also point out that the new law can be used to manipulate the market and so eliminate middlemen, with harmful effects for the renting public, the rental trade and competition in general. The Federal Cartel Office has already been called in, since there is a danger that the rental market may become an oligopoly.
They also complain that there has been interference with the formally established and actually exercised (Article 14, Para. 1, sentence 1 of the Basic Law) CD rental trade, and that the principle of equal treatment (Article 3, Para. 1, of the Basic Law) is violated by the distinction which the Directive makes between different kinds of protected work, e.g. CD rental firms are affected, but public libraries are not.
They demand that the solution already embodied in Section 27 of the Copyright Act be recognised as the one which best serves the interests involved. This gives the author a fair share of the proceeds from commercial renting of copies of his work, which can be effectively enforced through performing rights societies.
Finally, they argue that this provision already satisfies the requirements of the EC Directive. The new law is neither necessary nor proportional as a means of enforcing authors' rights.
The CD rental operators have no objection to fair remuneration of authors under Section 27 of the Copyright Act as it now stands.
The Federal Constitutional Court is expected to give a decision by the end of the year.

(Kristina Stürzebecher,
Institut für Europäisches Medienrecht, EMR)

UNITED KINGDOM: Government protects eight sporting events for terrestrial television

The British Government has agreed to provide protection for eight important sporting events which will mean that they cannot be shown live on an exclusive basis either on subscription or on pay-per-view. The effect is that they will be shown on terrestrial television.
The previous position under the Broadcasting Act 1990 was that these 'listed events' were protected from being broadcast solely on a pay-per-view basis, but could be shown exclusively on a subscription channel. The House of Lords voted 223 to 106 to amend the Broadcasting Bill currently before Parliament in order to extend the protection and this was taken into account by the Government in the decision to extend protection.
The eight events are the FA Cup Final (football), the Scottish Cup Final (football), the World Cup finals (football), the Olympics, home test matches involving England (cricket), the Grand National (horse racing), the Derby (horse racing) and finals weekend at Wimbledon (tennis).

See 54 House of Lords Debates, 4 March 1996, Written Answers cols 7-9, and The Financial Times 4 March 1996.

(Prof. Tony Prosser,
Glasgow University School of Law)

UNITED KINGDOM: Sale of television sports rights

As part of its contribution to the debate over whose interests should prevail in the sale of television rights to sports events, the Department of National Heritage has recently published a consultation paper on the subject, which summarises the key issues and main options for change. In 1994, the National Heritage Select Committee proposed that the 1990 Broadcasting Act's controls be extended and that there be regular review of the situation in the light of technological developments.
The Government's view is that the debate is not really over terrestrial versus subscription television. Rather, the public interest must balance the legitimate interests of the broadcasting and sport industries, viewers and listeners, and those who play sport. However, the Government believes that 'the weight of responsibility should be with the sport authorities' in balancing the maximisation of revenue and audience.
The issues are to be discussed with interested parties, so that a suitable consideration to the matter can be given in Parliament during the passage of the Broadcasting Bill.

'Broadcast Sports Rights: Informing the Debate'. Available from the Broadcast Policy Division, Department of National Heritage, 2-4 Cockspur Street, London SW1Y 5DH, tel. +44-171-2116000, fax -2116270.

(David Goldberg,
University of Glasgow School of Law)

ITALY: Broadcasting rights for football granted to *Cecchi Gori* Group and to *Europa TV*

On 29 February of this year the Italian Football Union assigned the rights to broadcast football matches for the years 1996-1999.
The Presidents of the Football Federations of the first and second division decided for the first time not to confirm the assignment of rights to the public broadcaster *RAI.* The winner was the *Cecchi Gori* Group, a private broadcaster which controls two national channels; *TeleMontecarlo* and *Videomusic.* The offer made by the *Cecchi Gori* Group was 640 billion Lire for three years (about 400 millions U.S. dollars) and includes domestic rights, both for radio and TV, as well as international rights. The offer made by *RAI* was of 580 billion Lire. The *Berlusconi* Group (*Mediaset*) offered 510 billion. *Europa TV,* a private broadcaster which controls channels *Tele+1* and *Tele+2,* and already transmits football games on pay-TV, obtained again the rights for pay-TV and pay-per-view. In this case, the offer accepted by the League was of 203 billion Lire for three years. The public broadcaster *RAI* was not allowed to participate in the assignement of pay-TV and pay-per-view rights since current law only grants private broadcasters the right to transmit in an encrypted format (*see*: IRIS 1996-1:8).

(Roberto Mastroianni,
University of Florence, Public Law Department)

FRANCE: *Canal+* acquires broadcasting rights of *Ligue Nationale de Football*

The April issue of the German monthly magazine INFOSAT reports that the French pay-TV broadcaster *Canal+* has acquired the broadcasting rights of the soccer games to be played in the *Ligue National de Football* (LNF) in the next five years. The games will be broadcast in *Canal+*'s digital satellite service. To receive them, viewers will need to invest in a satellite dish and a digital decoder. In addition, they will have to pay FF 50 for each game they want to view.
The agreement between *Canal+* and the French Football Union would stipulate that *Canal+* will broadcast one game live in analogue format on each of the 38 competition days. The nine other games it could broadcast in digital format during evening hours on a pay-per-view basis.
The agreement also contains the possibility for the French Football Union to require from *Canal+* the exclusion of viewers in towns where a game is played from the reception of the programme. This would be in the interest of the stadium in which the game is played because it is expected that fans excluded from watching the game on television, will come to the stadium.
One-third of the revenues will go to *Canal+,* one-third to the LNF and onethird will be used for the technical realisation of the broadcasts.

(Ad van Loon,
European Audiovisual Observatory)

AUSTRIA: Broadcasting rights for soccer games to be assigned to non-domestic private television broadcaster?

Currently in Austria, it is not yet possible for a private television broadcaster to obtain a broadcasting licence. Recently, however, a private commercial Austrian broadcaster, *RTS,* obtained a non-domestic satellite broadcasting licence in the UK with the intention to start a programme directed to the Austrian public.
The April issue of the German monthly magazine INFOSAT reports that *RTS* is now negotiating with the German sports rights agency ISPR, owner of the broadcasting rights of the Austrian federal football league in order to obtain these rights.
If succesful, *RTS* would start its satellite programme in August 1996.

(Ad van Loon,
European Audiovisual Observatory)

NETHERLANDS: Football broadcasting rights sold to new sports channel

The Dutch Football Federation (*KNVB*) sold the broadcasting rights for its leagues to a new commercial broadcasting channel, *Sport 7,* which will specialise in sports. The new station is set to start this August. The channel is jointly owned by several investors, under which *Philips, ING Bank,* production company *EndeMol and* the Dutch Football Federation, *KNVB* (10% share). The public broadcasters that lost out by this decision, represented by the coordinator *NOS,* have threatened to ask for a judicial review to sell the broadcasting rights to a third party, but the *NOS* has not yet taken any action in that direction.
The Government has given the new sports channel the go ahead, under the condition that it does not prevent the public broadcasters from making their own commentaries of the matches. Exclusive reports on the games are prohibited by the Dutch Media Act, which gives public broadcasters the right to cover current sports events. The *NOS* is expected to get a sub-licence from the sports channel to broadcast highlights from the football matches. In the mean time, premier division football club *Feyenoord* has legally challenged the authority of the Football Federation to sell the exclusive rights to cover the matches of the clubs. *Feyenoord,* as well as Ajax and two other clubs, holds the opinion that the clubs themselves should have control as to how to exploit its matches.
In a judgment of 19 March 1996 the president of the District Court of Utrecht has denied *Feyenoord,* one of the premier league football clubs and member of the Dutch Football Federation, its demand that the Football Federation be ordered to stop its activities in the new Sports Channel, as far as this concerns the exploitation of the matches played by *Feyenoord. Feyenoord* claimed that only she is entitled to exploit the broadcasting rights of their matches. The President reached the preliminary conclusion that the Football Federation's articles of association gave the Federation the right to grant the Sports Channel an exclusive broadcasting licence. *Feyenoord*'s reference to Articles 85 and 86 of the EC-treaty also failed. The football club plans to appeal against the verdict.
Pres. Rb. Utrecht 19 maart 1996, Stichting *Feyenoord vs. KNVB*. Available in Dutch from the Observatory.

(Marcel Dellebeke,
Institute for Information Law at the University of Amsterdam)

NETHERLANDS: *RTL5* will not be shut down after all

In IRIS 1996-2: 14 we reported that the Holland Media Group SA (HMG) had decided to shut down its television channel *RTL5* following the decision taken by the European Commission of 20 September requiring HMG to sell *RTL5.* In reaction to the decision, Mr Karel van Miert, the Commissioner responsible for competition matters, indicated that this constituted a new situation in which the Commission would have to reconsider its initial point of view.
In the meantime, as we report elsewhere in this issue of IRIS a new private commercial television channel is being established in the Netherlands, *i.e., Sport 7,* which will specialise in sports. For the European Commission this, together with the fact that HMG has announced that it will change the programme format of *RTL5,* is sufficient reason to no longer insist on the selling of *RTL5* by HMG. As from September, *RTL5* would only broadcast films and magazine types of programmes; the other types of programmes that *RTL5* has broadcast so far would be taken over by *Veronica,* which is also part of HMG.

(Ad van Loon,
European Audiovisual Observatory)

SWEDEN: Negotiations on a new licence term for private commercial television

Negotiations on a second term of licence from 1998 onwards have been opened between the Swedish Government and the licence holder *TV 4 AB,* by way of a formal notification from the Government on the termination of the agreement.
Though the field is, in principle, open for new applicants, *TV 4* is expected to get a new licence.
The introduction of digital television (see elsewhere in this issue) is expected to influence the licence conditions since the monopoly position of *TV 4* as a private commercial broadcaster is likely to end.

(Jens Cavallin,
Council for Pluralism in the media, Sweden)

SWEDEN: VAT on film exhibitions

The Swedish Minister of Culture has announced that she favours the introduction of a 6% VAT rate for the exhibition of films in cinemas. Until now, these exhibitions were exempted from VAT. The rate is not expected to influence the film production support system agreed upon between the State and the industry, which is based on a special levy on all cinema tickets.

(Jens Cavallin,
Council for Pluralism in the media, Sweden)

U.S.A.: Television networks agree to rate television programming

On 29 February 1996, top U.S. television network executives met with President Bill Clinton at the White House for two hours and afterwards announced that they had agreed to implement a voluntary ratings system that would give parents greater control of programming watched by their children. The clear impetus to the agreement was the passage three weeks earlier of the Telecommunications Act of 1996 ("1996 Act" - *see:* IRIS 1996-3: 7-10).
One provision of the 1996 Act requires all new television sets manufactured or sold in the U.S. after 1998 to be equipped with a new technology referred to as the "V-chip". The purpose of the V-chip will be to give parents the ability to block the display of television programming that they consider too violent, sexually explicit, or otherwise indecent for their children. The V-chip operates by blocking all programs with a common rating that the television device with a V-chip has been programed to block. Of course, programming must first be rated and then encoded for the V-chip to become effective.
Section 551(b) of the 1996 Act grants the Federal Communications Commission ("FCC") the power to require programme distributors - usually a television network or independent station - to transmit a rating so that parents can block undesired programming. The FCC is further authorized to establish an advisory committee, to issue guidelines for rating of video programming that contains sexual, violent, or otherwise indecent material. In addition to industry representatives, the advisory committee would also consist of parents and public interest groups.
As it became clear that the 1996 Act and its V-chip provision would become law, the various factions of the television industry banded together in order to establish their own rating system. The industry calculated that developing their own rating system would dissuade government involvement. The industry enlisted the aid of Jack Valenti of the Motion Picture Association of America, who had developed the ratings system for movies in 1968.
In its public statement, the television industry announced that its ratings system would be in place in January 1997. Since the V-chip will not be available until at least a year later, ratings initially will be published in newspapers and magazines so parents can use the ratings to guide their children's viewing habits.
Developing television ratings will prove much more challenging than those of the film industry. There are only some 700 films, or 1,200 hours of films, to rate every year. In contrast, there are over 600,000 hours of television programming on average cable systems. Since each distributor will rate its own programming, there is a concern that programs with similar content will carry different ratings. While the an industry ratings review process is included in the proposal, policing the ratings may become difficult due to sheer volume.
Several questions remain unanswered. Will the television ratings be similar to those used by the movie industry, or will there be more gradations? Will a television series receive a blanket rating, or will each episode be rated individually? Will sports events and newscasts be rated? Conventional wisdom would dictate that neither is likely to be rated.

The text of the television industry statement is available in English from the Observatory.

(L. Frederik Cederqvist, Esq., Senior Research Associate,
Communications Media Center, New York Law School)

U.S.A.: Publication of a study on violence on television

A television violence study group (NTVS), created in the United States on 1 June 1994 on the initiative of the *National Cable Television Association* (NCTA), has just published its analyses and conclusions. This is the first part in a series of research documents which is to include three reports spread over three years. The first report, referred to here, commissioned by the NCTA and published by Mediascope - a non profit-making body - collates the results of specific research carried out in parallel by groups of specialists from four different universities. It therefore comprises four separate but complementary reports. The first, carried out by the University of California in Santa Barbara, is an analysis of violence in television programmes as a whole. The second, by the University of Texas in Austin, concerns the violence within reality shows. The third, carried out by the University of Wisconsin in Madison, studies the systems of classification and prevention connected with television programmes. The fourth, by the University of North Carolina in Chapell Hill, deals with the evaluation and effectiveness of anti-violence programmes on television.
Overall it is intended as a tool available to anyone interested in the television phenomenon (parents, administration, programme editors and distributors, etc) to enable them to evaluate all the harmful consequences of sometimes irresponsible programming and production policy.
Mediascope has published the following four documents on the analyses and conclusions of these different research studies:
NTVS - Executive Summary, 1994-1995, price: $10;
NTVS - Scientific Papers, 1994-1995, price: $18;
NTVS - Content Analysis Codebooks, 1994-1995;
NTVS - Sample of programs for Content Analysis, 1994-1995.

For further information or to order these documents, please contact MEDIASCOPE INC. directly at 12711 Ventura Boulevard, Studio City, CA 91604, USA. Tel.: +1 818 5082080, fax: +1 818 5082088, E-mail: mediascope@mediascope.org; URL http://www.igc.apc.org/mediascope/ntvs.html.

(Frédéric Pinard,
European Audiovisual Observatory)

AGENDA

Licensing in Europe
14 May 1996
Organiser : EuroForum
Venue : Forte Crest Regents Park
Carburton Street, London W1
Tel : +44 171 878-6888
Fax : +44 171 878-6999

Telecommunication Services and Competition Law in Europe
16 and 17 may 1996
Venue : Hotel d'Angleterre, Copenhagen, Denmark
Organiser : International Bar Association
271 Regent Street
London W1R 7PA
Tel : +44 171 629 1206
Fax : +44 171 409 0456

Opportunities and Risks in Telecoms Finance
21-24 May
Venue : Forum hotel,
97, Cromwell Road
London SW7 4DN, UK
Organiser : Vision in Business Limited
Tel : +44 171 405 6667
Fax : +44 171 405 5119

Business Multimedia
15 May : legal seminar
Venue : Forum hotel,
97, Cromwell Road, London SW7 4DN
16 and 17 mai : conference
Venue: East Court Conference Centre,
Warwick Road London SW5 9TA
Organiser : IIR Limited
Tel : +44 171 915 5055
Fax : +44 171 915 5056

Copyright and neighbouring rights in the digital era: new challenges for rights holders, rights management and users
28 and 29 May 1996
Venue : Oslo
Organied by the Council of Europe in co-operation with the Royal Norwegian Ministry of Cultural Affairs
Information: Mr Alfonso de Salas, Media Section, Directorate of Human Rights, Council of Europe
Tel : +33 88412329
Fax :+33 88412705

L'actualité juridique de la communication audiovisuelle
4 & 5 june 1996
Venue : Hôtel Golden Tulip
218/220, rue du Faubourg Saint-Honoré
F-75008 Paris
Organiser : EFE
Tel : +33 1 44 09 24 24
Fax : +33 1 40 55 00 68

The Future of the European Space Industry
4 and 5 june 1996
Venue : The Park Lane Hotel, London
Organiser : AIC Conferences Limited
2nd floor, 100 Hatten Garden,
London EC1N 8NX
Tel : +44 171 242 2324
Fax : +44 171 242 2320

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